

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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Clean Water Act Section 401 Water Quality Certification
and Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

**PROJECT: Encinitas Creek Channel Drainage Improvement
Certification Number 10C-076
WDID: 9000002130**

Reg. Meas. ID: 375365 Place ID: 756308 Party ID: 522106 Person ID: 369592
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**APPLICANT: City of Encinitas
505 S. Vulcan Ave
Encinitas, CA 92024**

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION

An application dated August 23, 2010 was submitted by the City of Encinitas (hereinafter Applicant), for Water Quality Certification pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) for the proposed Encinitas Creek Channel Improvements Project (Project). The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) deemed the application to be complete on May 12, 2011. The Applicant proposes to discharge dredged or fill material to waters of the United States and/or State associated with construction activity at the Project site. The Applicant has also applied for a Clean Water Act section 404 permit from the United States Army Corps of Engineers for the Project (USACE File No. SPL-2010-00828-PJB)

The Project is located within the City of Encinitas, San Diego County, California at the northwest and southeast corner of El Camino Real and Leucadia Boulevard. The Project center reading is located at latitude 33.0685°N and longitude -117.2633°W. The Applicant has paid all required fees for this Certification in the amount of \$6,208.00. On August 25, 2010, the San Diego Water Board provided public notice of the Project application pursuant to California Code of Regulations, title 23, section 3858 by posting information describing the Project on the San Diego Water Board's web site and providing a period of twenty-one days for public review and comment. No comments were received.

The Project proposes to enhance, re-establish, and restore the ecological functions and services of Encinitas Creek and provide wetlands capable of conveying a 50 year storm event. The Applicant will restore and preserve a 4.56 acre, 615 foot-long section, of Encinitas Creek

by reconfiguring and widening the existing creek channel into a braided earthen channel network to improve flood flow, provide better floodplain connectivity, and to help restore appropriate native riparian vegetation. Three braided earthen channels accompanied by vegetated low islands and transitional benches will be created through excavation of accumulated sediment from within the creek floodplain and beneath the Leucadia Boulevard Bridge, as described in the Project's *Final Compensatory Wetlands Mitigation & Monitoring Plan* (Mitigation Plan), prepared by Dudek and dated April 2014. A 16 foot-wide permanent decomposed granite access road will be constructed northeast of the creek to provide short-term construction access and long-term access to restoration crews. A section of articulated concrete block will be installed at the toe of the constructed access road to provide long-term bank stability for future periodic creek crossings. Approximately 0.02 acre of rock riprap will be added to existing riprap in the Project area near the southwest portion of the newly constructed channel to direct storm water runoff from an existing drain outlet beneath Leucadia Boulevard to the reconfigured channel. The access road and riprap extension totals 0.16 acres. The Applicant will perform a one-time removal of accumulated sediment and wetlands vegetation overgrowth from an existing culvert at the southeast corner of the intersection of Leucadia Boulevard and El Camino Real and beneath the bridge to restore appropriate flood flows in the Project area. Long term routine channel maintenance activities such as sediment removal, vegetation removal, and tree trimming requiring heavy equipment and machinery to work within Encinitas Creek are not covered by this Certification.

The Project application and supplemental information provided by the Applicant on May 2, 2013 includes a description of the design objectives, operation, and degree of treatment expected to be attained from equipment, facilities, or activities (including construction and post-construction BMPs) to treat waste and reduce runoff or other effluents which may be discharged during construction. Compliance with the Certification conditions will help ensure that construction and post-construction discharges from the Project will not cause on-site or off-site downstream erosion, damage to downstream properties, or otherwise damage stream habitats in violation of water quality standards in the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan).

Project construction will permanently impact 0.25 acres (200 linear feet) and temporarily 1.89 acres (2,120 linear feet) of wetland waters of the United States and/or State. The Applicant reports that the Project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impacts to aquatic resources considering all potential practicable alternatives, such as the potential for alternate available locations, designs, reductions in size, configuration or density.

The Applicant reports that compensatory mitigation for the permanent loss of 0.25 acres of jurisdictional waters will be achieved through the establishment, restoration, enhancement, and preservation of 4.53 acres of waters of the United States and/or State. All waters of the United States and/or State receiving temporary discharges of fill material will be restored upon removal of the fill. Mitigation for discharges of fill material to waters of the United States and/or State will be completed by the Applicant onsite at an overall minimum compensation ratio of 22.3:1 (area mitigated:area impacted).

Detailed written specifications and work descriptions for the wetlands restoration plan including, but not limited to, the geographic boundaries of the project, timing, sequence,

monitoring, maintenance, ecological success performance standards and provisions for long-term management and protection of the mitigation areas are described in the Mitigation Plan. The Mitigation Plan is incorporated in this Certification by reference as if set forth herein. The Mitigation Plan provides for implementation of compensatory mitigation which offsets adverse water quality impacts attributed to the Project in a manner that protects and restores the abundance, types and conditions of aquatic resources and supports their beneficial uses. Implementation of the Mitigation Plan will reduce significant environmental impacts to resources within the San Diego Water Board's purview to a less than significant level. Based on all of these considerations, the Mitigation Plan will adequately compensate for the loss of beneficial uses and habitat within waters of the United States and/or State attributable to the Project.

Additional Project details are provided in Attachments 1 through 5 of this Certification.

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Attachments:

- 1. Definitions**
- 2. Project Location Maps**
- 3. Project Site Plans**
- 4. Mitigation Figures**
- 5. CEQA Mitigation Monitoring and Reporting Program**

I. STANDARD CONDITIONS

Pursuant to section 3860 of title 23 of the California Code of Regulations, the following three standard conditions apply to all water quality certification actions:

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and chapter 28, article 6 (commencing with title 23, section 3867), of the California Code of Regulations.
- B. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to California Code of Regulations title 23, section 3855 subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- C. This Certification action is conditioned upon total payment of any fee required under title 23, chapter 28 (commencing with section 3830) of California Code of Regulations and owed by the applicant.

II. GENERAL CONDITIONS

- A. **Term of Certification.** Water Quality Certification No. 10C-076 (Certification) shall expire upon a) the expiration or retraction of the Clean Water Act section 404 (33 U.S.C. §1344) permit issued by the U.S. Army Corps of Engineers for this Project, or b) five (5) years from the date of issuance of this Certification, whichever occurs first.
- B. **Duty to Comply.** The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification.
- C. **General Waste Discharge Requirements.** The requirements of this Certification are enforceable through Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material that have Received State Water Quality Certification* (Water Quality Order No. 2003-0017-DWQ). This provision shall apply irrespective of whether a) the federal permit for which the Certification was obtained is subsequently retracted or is expired, or b) the Certification is expired. Water Quality Order No. 2003-0017-DWQ is accessible at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf.
- D. **Project Conformance with Application.** All water quality protection measures and BMPs described in the application and supplemental information for water quality

certification are incorporated by reference into this Certification as if fully stated herein. Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action.

E. Project Conformance with Water Quality Control Plans or Policies.

Notwithstanding any more specific conditions in this Certification, the Project shall be constructed in a manner consistent with the Basin Plan and any other applicable water quality control plans or policies adopted or approved pursuant to the Porter Cologne Water Quality Act (Division 7, commencing with Water Code Section 13000) or section 303 of the Clean Water Act (33 U.S.C §1313).

F. Project Modification. The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this Certification, to the San Diego Water for prior review and written approval. If the San Diego Water Board is not notified of a significant change to the Project, it will be considered a violation of this Certification.

G. Certification Distribution Posting. During Project construction, the Applicant must maintain a copy of this Certification at the Project site. This Certification must be available at all times to site personnel and agencies. A copy of this Certification shall also be provided to any contractor or subcontractor performing construction work, and the copy shall remain in their possession at the Project site.

H. Inspection and Entry. The Applicant must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents as may be required under law, to:

1. Enter upon the Project or Compensatory Mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Certification;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Certification;
3. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and
4. Sample or monitor, at reasonable times, for the purposes of assuring Certification compliance, or as otherwise authorized by the Clean Water Act or Water Code, any substances or parameters at any location.

I. Enforcement Notification. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to

any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.

- J. **Certification Actions.** This Certification may be modified, revoked and reissued, or terminated for cause including but not limited to the following:
1. Violation of any term or condition of this Certification;
 2. Monitoring results indicate that continued Project activities could violate water quality objectives or impair the beneficial uses of the Encinitas Creek and Batiquitos Lagoon;
 3. Obtaining this Certification by misrepresentation or failure to disclose fully all relevant facts;
 4. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; and
 5. Incorporation of any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

The filing of a request by the Applicant for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Certification condition.

- K. **Duty to Provide Information.** The Applicant shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Certification or to determine compliance with this Certification.
- L. **Property Rights.** This Certification does not convey any property rights of any sort, or any exclusive privilege.
- M. **Petition.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

III. CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. **Approvals to Commence Construction.** The Applicant shall not commence Project construction until all necessary federal, state, and local approvals are obtained.
- B. **Personnel Education.** Prior to the start of the Project, and annually thereafter, the Applicant must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response measures, and BMP implementation and maintenance measures.
- C. **Spill Containment Materials.** The Applicant must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- D. **General Construction Storm Water Permit.** Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity*, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities.
- E. **Waste Management.** The Applicant must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, state, and local laws and regulations. Waste management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff. The storage, handling, treatment, or disposal of waste shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050. Upon Project completion, all Project generated debris, building materials, excess material, waste, and trash shall be removed from the Project site(s) for disposal at an authorized landfill or other disposal site in compliance with federal, state and local laws and regulations.
- F. **Waste Management.** Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited.
- G. **Downstream Erosion.** Discharges of concentrated flow during construction or after Project completion must not cause downstream erosion or damage to properties or stream habitat.

- H. **Construction Equipment.** All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.
- I. **Process Water.** Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm water runoff flows. Pollutants discharged to areas within a stream diversion must be removed at the end of each work day or sooner if rain is predicted.
- J. **Surface Water Diversion.** All surface waters, including ponded waters, must be diverted away from areas of active grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of the receiving water quality objectives. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- K. **Re-vegetation and Stabilization.** All areas that have 14 or more days of inactivity must be stabilized within 14 days of the last activity. The Applicant shall implement and maintain BMPs to prevent erosion of the rough graded areas. After completion of grading, all areas must be re-vegetated with native species appropriate for the area. The re-vegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be accessed at <http://www.cal-ipc.org/ip/inventory/>.
- L. **Hazardous Materials.** Except as authorized by this Certification, substances hazardous to aquatic life including, but not limited to, petroleum products, unused cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.
- M. **Vegetation Removal.** Removal of vegetation must occur by hand, mechanically, or through application of United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to minimize adverse effects to beneficial uses of waters of the United States and/or State. Discharges related to the application of aquatic pesticides within waters of the United States must be done in compliance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, the *Statewide General National Pollution Discharge Elimination System Permit for the Discharge of Aquatic Weed Control in Waters of the United States*, and any subsequent reissuance as applicable.

- N. Limits of Disturbance.** The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.
- O. On-site Qualified Biologist.** The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist's activities shall be kept on-site and made available for review upon request by the San Diego Water Board.
- P. Beneficial Use Protection.** The Applicant must take all necessary measures to protect the beneficial uses of waters of the Encinitas Creek and Batiquitos Lagoon. This Certification requires compliance with all applicable requirements of the Basin Plan. If at any time, an unauthorized discharge to surface waters (including rivers or streams) occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately and the San Diego Water Board shall be notified in accordance with Notification Requirement VII.A of this Certification. Associated Project activities may not resume without approval from the San Diego Water Board.

IV. POST-CONSTRUCTION BEST MANAGEMENT PRACTICES

- A. Post-Construction Discharges.** The Applicant shall not allow post-construction discharges from the Project site to cause or contribute to onsite or off-site erosion or damage to properties or stream habitats.
- B. Storm Drain Inlets.** All storm drain inlet structures within the Project boundaries must be stamped or stenciled (or equivalent) with appropriate language prohibiting non-storm water discharges.
- C. Post-Construction BMP Design.** The Project must be designed to comply with the most current Standard Storm Water Mitigation and Hydromodification Plans for City of Encinitas.

V. PROJECT IMPACTS AND COMPENSATORY MITIGATION

- A. Project Impact Avoidance and Minimization.** The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.
- B. Project Impacts and Compensatory Mitigation.** Unavoidable Project impacts to Encinitas Creek and Batiquitos Lagoon within the Carlsbad Watershed must not exceed the type and magnitude of impacts described in the table below. At a minimum, compensatory mitigation required to offset unavoidable temporary and permanent

Project impacts to waters of the United States and/or State must be achieved as described in the table below:

	Impacts (acres)	Impacts (linear ft.)	Mitigation for Impacts (acres)	Mitigation Ratio (area mitigated :area impacted)	Mitigation for Impacts (linear ft.)	Mitigation Ratio (linear feet mitigated :linear feet impacted)
Permanent Impacts						
Wetland	0.25	200	0.35 Establishment 1.29 Enhancement 1.98 Restoration ¹	1.4:1 Establishment 5.2:1 Enhancement 7.8:1 Restoration	4,136	20.7:1
Temporary Impacts						
Wetland ²	1.89	2,120	1.89	1:1	2,120	1:1

1. Wetland establishment, restoration, and enhancement onsite.

2. All areas of temporary impacts must be restored to pre-project contours and re-vegetated with native species.

C. Compensatory Mitigation Plan Implementation. The Applicant must fully and completely implement the Mitigation Plan; any deviations from, or revisions to, the Mitigation Plan must be pre-approved by the San Diego Water Board.

D. Performance Standards. Compensatory mitigation required under this Certification shall be considered as achieved once it has met the ecological success performance standards contained in the Mitigation Plan (Section 5, Tables 9, 10, and 11) to the satisfaction of the San Diego Water Board.

E. Compensatory Mitigation Site Design. The compensatory mitigation site(s) shall be designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. This includes minimization of active engineering features (e.g., pumps) and appropriate siting to ensure that natural hydrology and landscape context support long-term sustainability in conformance with the following conditions:

1. Most of the channels through the mitigation sites shall be characterized by equilibrium conditions, with no evidence of severe aggradation or degradation;
2. As viewed along cross-sections, the channel and buffer area(s) shall have a variety of slopes, or elevations, that are characterized by different moisture gradients. Each sub-slope shall contain physical patch types or features that contribute to irregularity in height, edges, or surface and to complex topography overall; and
3. The mitigation sites shall have a well-developed plant community characterized by a high degree of horizontal and vertical interspersions among plant zones and layers.

- F. Temporary Project Impact Areas.** The Applicant must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge of pollutants to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and re-vegetation with native species. The Applicant must implement all necessary BMPs to control erosion and runoff from areas associated with the Project.
- G. Long Term Management and Maintenance.** The compensatory mitigation site(s), must be managed, protected, and maintained, in perpetuity, in conformance with the long term management plan and the final ecological success performance standards identified in the Mitigation Plan. The aquatic habitats, riparian areas, buffers and uplands that comprise the mitigation site(s) must be protected in perpetuity from land-use and maintenance activities that may threaten water quality or beneficial uses within the mitigation area(s) in a manner consistent with the following requirements:
1. Any maintenance activities on the mitigation site(s) that do not contribute to the success of the mitigation site(s) and enhancement of beneficial uses and ecological functions and services are prohibited;
 2. Maintenance activities must be limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species, and remedial measures deemed necessary for the success of the compensatory mitigation project;
 3. The Mitigation site(s) must be maintained, in perpetuity, free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species must not occupy more than 5 percent of the mitigation site(s); and
 4. If at any time a catastrophic natural event (e.g., fire, flood) causes damage(s) to the mitigation site(s) or other deficiencies in the compensatory mitigation project, the Applicant must take prompt and appropriate action to repair the damage(s) including replanting the affected area(s) and address any other deficiencies. The San Diego Water Board may require additional monitoring by the Applicant to assess how the compensatory mitigation site(s) or project is responding to a catastrophic natural event.
- H. Timing of Mitigation Site Construction.** The construction of proposed mitigation must be concurrent with project grading and completed no later than 9 months following the start of Project construction. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10% of the cumulative compensatory mitigation for each month of delay.

- I. **Mitigation Site(s) Preservation Mechanism.** Within 60 days from the start of **Project construction**, the Applicant must provide the San Diego Water Board a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect all mitigation areas and their buffers in perpetuity. **Within one year of the issuance of this Certification**, the Applicant must submit proof of a completed final preservation mechanism that will protect all mitigation areas and their buffers in perpetuity. The conservation easement, deed restriction, or other legal limitation on the mitigation properties must be adequate to demonstrate that the sites will be maintained without future development or encroachment on the sites which could otherwise reduce the functions and values of the sites for the variety of beneficial uses of waters of the United States and/ or State that it supports. The legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the sites. The preservation mechanism must clearly prohibit activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation.

VI. MONITORING AND REPORTING REQUIREMENTS

- A. **Representative Monitoring.** Samples and measurements taken for the purpose of monitoring under this Certification shall be representative of the monitored activity.
- B. **Monitoring Reports.** Monitoring results shall be reported to the San Diego Water Board at the intervals specified in section VI of this Certification.
- C. **Monitoring and Reporting Revisions.** The San Diego Water Board may make revisions to the monitoring program at any time during the term of this Certification and may reduce or increase the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.
- D. **Records of Monitoring Information.** Records of monitoring information shall include:
 1. The date, exact place, and time of sampling or measurements;
 2. The individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The individual(s) who performed the analyses;
 5. The analytical techniques or methods used; and
 6. The results of such analyses.

- E. California Rapid Assessment Method.** California Rapid Assessment Method (CRAM)¹ monitoring must be performed to assess the current and potential ecological conditions (ecological integrity) of the impact site and proposed compensatory mitigation site(s). These conditions reflect the overall level of ecological function of an aquatic resource. Prior to initiating Project construction, the Applicant shall develop a monitoring plan to implement California Rapid Assessment Method (CRAM) monitoring. The Applicant must conduct a quantitative function-based assessment of the health of streambed habitat to establish pre-project baseline conditions, set CRAM success criteria, and assess the mitigation site(s) progress towards meeting the success criteria. CRAM monitoring must be conducted prior to the start of Project construction authorized under this Certification and in years 3 and 5 following construction completion at the same monitoring stations outlined in VI.F below. CRAM monitoring results shall be submitted with the corresponding Annual Progress Report. An evaluation, interpretation, and tabulation of all CRAM assessment data shall be submitted with the final Project Annual Project Monitoring Report.
- F. Benthic Macroinvertebrate Community Analysis.** The Applicant shall conduct bioassessment monitoring, as described in this section, to assess the success of mitigation areas and the impact of construction activities, whenever applicable, using benthic macroinvertebrate community data. Bioassessment shall include: 1) the collection and reporting of benthic macroinvertebrate data; and 2) the collection and reporting of physical habitat data. Bioassessment using benthic macroinvertebrates shall be conducted in perennial wadeable streams during the index period. Perennial streams shall be defined as streams with surface water flow present during the appropriate index period². Wadeable streams shall be defined as streams that can be safely waded in order to be sampled for benthic invertebrates during the appropriate index period. If the appropriate sampling period lies outside the index period, please contact the San Diego Water Board.
1. **Field Methods:** Bioassessment monitoring must be performed using the SWAMP field methods specified in *Standard Operating Procedures for Collecting Benthic Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California*³ (SOP, Ode 2007) or any updates of these methods. The Applicant shall conduct, concurrently with all required benthic macroinvertebrate collections, the "Full" suite of physical habitat characterization measurements as specified in Table 1 of the SOP.
 2. **Laboratory Methods:** Benthic macroinvertebrates shall be identified using the SWAMP laboratory methods specified in *Standard Operating Procedures for Laboratory Processing and Identification of Benthic Macroinvertebrates in*

¹ The most recent versions of the California Rapid Assessment Method (CRAM) for Wetlands and additional information regarding CRAM can be accessed at <http://www.cramwetlands.org/>

² The appropriate index period can be found electronically at the following location:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/cgp_biomap.pdf

³ The SOP can be found electronically at the following location:
http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/phab_sopr6.pdf

*California*⁴ (Laboratory SOP, Woodard et al. 2012) or any updates of these methods. Standard Taxonomic Effort (STE) Level II of the Southwestern Association of Freshwater Invertebrate Taxonomists (SAFIT) is required. Quality control samples are required for 10% of the samples each year and Quality Assurance samples must be analyzed by the Aquatic Bioassessment Laboratory of the California Department of Fish and Wildlife.

3. **Data Analysis:** Analysis of benthic macroinvertebrate data shall be conducted using scoring tools including but not limited to the *Southern California Index of Biotic Integrity*⁵ (Ode et. al. 2005) and the *California Stream Condition Index*⁶ (CSCI, Mazor et. al., currently in review) when the CSCI scoring tool is finalized.
4. **Data Storage:** Benthic macroinvertebrate data and physical habitat data shall be submitted to the California Environmental Data Exchange Network⁷ (CEDEN).
5. **Monitoring Sites:** All monitoring sites shall be approved by staff at the San Diego Water Board before sampling is initiated and must meet the following conditions:
 - a. **Mitigation Sites:** At a minimum, bioassessment monitoring for mitigation areas must be performed at three sites (assessment stations) in Encinitas Creek before Project initiation, and then in years 3 and 5 following start of Project construction, during the established "index period" for the Encinitas Creek watershed. The first assessment station is the reference station, which must be located upstream of the mitigation site(s) in a reference area in Encinitas Creek or the closest tributary in Encinitas Ranch east of El Camino Real; the second assessment station must be located within the mitigation site(s); and the third assessment station must be located downstream of the mitigation site(s). The reference station upstream of the mitigation site(s) must be located and sampled concurrently with the second and third assessment stations. Reference stations shall be defined as stations that show minimally disturbed conditions.
 - b. **Monitoring Sites Before/After Construction:** At a minimum, bioassessment monitoring for impacts during construction must be performed during the established index period for the Carlsbad watershed, at two sites (assessment stations) in Encinitas Creek before Project initiation and then 6 months after construction has ended. The first assessment must be located upstream of the construction site, and the second assessment station must be located downstream the construction site.

⁴ The Laboratory SOP can be found electronically at the following location:
http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/bmi_lab_sop_final.pdf

⁵ The *Southern California Index of Biotic Integrity* can be found electronically at the following location:
http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/coastalstreams.pdf

⁶ The *California Stream Condition Index* can be found electronically at the following location:
http://www.waterboards.ca.gov/plans_policies/docs/biological_objective/2_scoring%20tool.pdf

⁷ The California Environmental Data Exchange Network can be found electronically at the following location:
<http://www.ceden.org/>

6. **Monitoring Reports:** An evaluation, interpretation and tabulation of the benthic macroinvertebrate community analysis must be submitted prior to **May 1** with the respective Annual Project Monitoring Report.

- G. **Water Quality Monitoring:** The Applicant must perform water quality sampling and analysis, at a minimum, for pH, temperature, turbidity, and dissolved oxygen. Water quality sampling must be coordinated with the Benthic Macroinvertebrate Community Analysis (section VI.F above) in the appropriate monitoring years. The results of the water quality assessment must be submitted each year **with the Annual Progress Report**.

- H. **Annual Project Progress Reports.** The Applicant must submit annual Project progress reports describing status of the Project, status of BMP implementation, and compliance with all requirements of this Certification to the San Diego Water Board prior to **March 1** of each year following the issuance of this Certification, until the Project has reached completion. The monitoring period for each Annual Project Monitoring Report shall be January 1st through December 31st of each year. The report must include the following information:
 1. The names, qualifications, and affiliations of the persons contributing to the report;
 2. The status, progress, and anticipated schedule for completion of Project construction activities including the installation and operational status of best management practices project features for erosion and storm water quality treatment;
 3. A description of Project construction delays encountered or anticipated that may affect the schedule for construction completion; and
 4. A description of each incident of noncompliance during the annual monitoring period and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- I. **Final Project Completion Report.** The Applicant must submit a Final Project Completion Report to the San Diego Water Board **within 30 days of completion of the Project**. The final report must include the following information:
 1. Date of construction initiation;
 2. Date of construction completion;
 3. BMP installation and operational status for the Project;
 4. As-built drawings of the Project, no bigger than 11"X17";

5. Photo documentation of implemented post-construction BMPs and all areas of permanent and temporary impacts, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf. In addition, photo documentation must include Global Positioning System (GPS) coordinates for each of the photo points referenced; and
 6. An evaluation, interpretation, and tabulation of all CRAM assessment data, Benthic Macroinvertebrate Community Analysis, and Water Quality monitoring collected throughout the term of Project construction in accordance with section VI.E, VI.F and VI.G of this Certification.
- J. Annual Compensatory Mitigation Monitoring Report.** The Applicant must submit compensatory mitigation monitoring reports, annually, by **March 1** of each year containing sufficient information to demonstrate how the compensatory mitigation project is progressing towards accomplishing its objectives and meeting its performance standards. Mitigation monitoring reports must be submitted annually for a period of not less than five years, sufficient to demonstrate that the compensatory mitigation project has accomplished its objectives and met ecological success performance standards contained in the Mitigation Plan. Following Project implementation the San Diego Water Board may reduce or waive compensatory mitigation monitoring requirements upon a determination that performance standards have been achieved. Conversely the San Diego Water Board may extend the monitoring period beyond five years upon a determination that the performance standards have not been met or the compensatory mitigation project is not on track to meet them.

The monitoring reports must include, but not be limited to, the following information:

1. Names, qualifications, and affiliations of the persons contributing to the report;
2. An evaluation, interpretation, and tabulation of the parameters being monitored, including the results of the Mitigation Plan monitoring program, and all quantitative and qualitative data collected in the field;
3. A description of the mitigation site(s) characteristics:
 - a. Detritus cover;
 - b. General topographic complexity;
 - c. General upstream and downstream habitat and hydrologic connectivity; and
 - d. Source of hydrology;
4. Monitoring data interpretations and conclusions as to how the compensatory mitigation project(s) is progressing towards meeting performance standards and whether the performance standards have been met;
5. A description of the progress toward implementing a plan to manage the compensatory mitigation project after performance standards have been achieved to

ensure the long term sustainability of the resource in perpetuity, including a discussion of long term financing mechanisms, the party responsible for long term management, and a timetable for future steps;

6. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 7. Stream photo documentation, including all areas of permanent and temporary impact, prior to and after mitigation site construction. Photo documentation must be conducted in accordance with guidelines posted at http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf. In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced;
 8. A qualitative comparison to adjacent preserved streambed areas;
 9. The results of the California Rapid Assessment Method (CRAM) monitoring required under section VI.E of this Certification;
 10. The results of the Benthic Macroinvertebrate Community Analysis monitoring required under section VI.F of this Certification;
 11. The results of the Water Quality Monitoring required under section VI.G of this Certification;
 12. As-built drawings of the compensatory mitigation project site(s), no bigger than 11"X17; and
 13. A survey report documenting boundaries of the compensatory mitigation site(s).
- K. **Reporting Authority.** The submittal of information required under this Certification, or in response to a suspected violation of any condition of this Certification, is required pursuant to Water Code section 13267 and 13383. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit information pursuant to Water Code sections 13268 or 13385.
- L. **Electronic and Paper Media Documents.** The Applicant must submit all reports and information under required under this Certification in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes (MB) will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification No. 10C-076:PIN 756308
2375 Northside Drive, Suite 100
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Certification No. 10C-076:PIN 756308.

M. Document Signatory Requirements. All applications, reports, or information submitted to the San Diego Water Board must be signed as follows:

1. For a corporation, by a responsible corporate officer of at least the level of vice president.
2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
4. A duly authorized representative may sign applications, reports, or information if:
 - a. The authorization is made in writing by a person described above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the San Diego Water Board Executive Officer.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

N. Document Certification Requirements. All applications, reports, or information submitted to the San Diego Water Board must be certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

VII. NOTIFICATION REQUIREMENTS

- A. **Twenty Four Hour Non-Compliance Reporting.** The Applicant shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the San Diego Water Board within **24 hours** from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The San Diego Water Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- B. **Hazardous Substance Discharge.** Except for a discharge which is in compliance with this Certification, any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of San Diego, in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Applicant is in violation of a Basin Plan prohibition.
- C. **Oil or Petroleum Product Discharge.** Except for a discharge which is in compliance with this Certification, any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.
- D. **Anticipated Noncompliance.** The Applicant shall give advance notice to the San Diego Water Board of any planned changes in the Project or the Compensatory Mitigation project which may result in noncompliance with Certification conditions or requirements.

- E. **Transfers.** This Certification is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:
1. **Transfer of Property Ownership:** The Applicant must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, but not be limited to, a statement that the Applicant has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the San Diego Water Board **within 10 days of the transfer of ownership.**
 2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
 3. **Transfer of Post-Construction BMP Maintenance Responsibility:** The Applicant assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred the Applicant must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Applicant must provide such notification to the San Diego Water Board **within 10 days** of the transfer of BMP maintenance responsibility.

Upon properly noticed transfers of responsibility, the transferee assumes responsibility for compliance with this Certification and references in this Certification to the Applicant will be interpreted to refer to the transferee as appropriate. Transfer of responsibility does not necessarily relieve the Applicant of this Certification in the event that a transferee fails to comply.

- F. **Discharge Commencement.** The Applicant must notify the San Diego Water Board in writing **at least 5 days prior to** the start of Project construction.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

- A. The City of Encinitas is the Lead Agency under the California Environmental Quality Act (CEQA) (Public Resources Code section 21000, et seq.) section 21067, and CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.) section

15367, and has filed a Mitigated Negative Declaration dated March 11, 2009 for the Final Environmental Impact Report (FEIR) titled *Encinitas Creek Channel Improvement Project* (State Clearing House Number 200931030). The Lead Agency has determined the Project will have a significant effect on the environment and mitigation measures were made a condition of the Project.

- B. The San Diego Water Board is a Responsible Agency under CEQA (Public Resources Code section 21069; CEQA Guidelines section 15381). The San Diego Water Board has considered the Lead Agency's FEIR and finds that the Project as proposed will have a significant effect on resources within the San Diego Water Board's purview.
- C. The San Diego Water Board has required mitigation measures as a condition of this Certification to avoid or reduce the environmental effects of the Project to resources within the Board's purview to a less than significant level.
- D. The Lead Agency has adopted a mitigation monitoring and reporting program pursuant to Public Resources Code section 21081.6 and CEQA Guidelines section 15097 to ensure that mitigation measures and revisions to the Project identified in the FEIR are implemented. The Mitigation Monitoring and Reporting Program (MMRP) is included and incorporated by reference in Attachment 5 to this Certification. The Applicant shall implement the Lead Agency's MMRP described in the FEIR, as it pertains to resources within the San Diego Water Board's purview. The San Diego Water Board has imposed additional MMRP requirements as specified in section VI of this Certification.
- E. As a Responsible Agency under CEQA, the San Diego Water Board will file a Notice of Determination in accordance with CEQA Guidelines section 15096 subdivision (i).

IX. SAN DIEGO WATER BOARD CONTACT PERSON

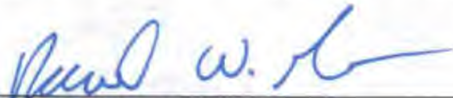
Alan Monji, Environmental Scientist
Telephone: 619-521-3968
Email: Alan.Monji@waterboards.ca.gov

X. WATER QUALITY CERTIFICATION

I hereby certify that the proposed discharge from the **Encinitas Drainage Improvement Project** (Certification No. 10C-076) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue individual waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited to, and all proposed mitigation being completed in strict compliance with, the applicants' Project description and/or the description in this Certification, and (b) compliance with all applicable requirements of the Basin Plan.

I, David W. Gibson, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of Certification No. 10C-076 issued on November 18, 2014.



DAVID W. GIBSON
Executive Officer
San Diego Water Board

18 Nov 2014
Date

ATTACHMENT 1

DEFINITIONS

Activity - when used in reference to a permit means any action, undertaking, or project including, but not limited to, construction, operation, maintenance, repair, modification, and restoration which may result in any discharge to waters of the state.

Buffer - means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

California Rapid Assessment Method (CRAM) - is a wetland assessment method intended to provide a rapid, scientifically-defensible and repeatable assessment methodology to monitor status and trends in the conditions of wetlands for applications throughout the state. It can also be used to assess the performance of compensatory mitigation projects and restoration projects. CRAM provides an assessment of overall ecological condition in terms of four attributes: landscape context and buffer, hydrology, physical structure and biotic structure. CRAM also includes an assessment of key stressors that may be affecting wetland condition and a "field to PC" data management tool (eCRAM) to ensure consistency and quality of data produced with the method.

Compensatory Mitigation Project - means compensatory mitigation implemented by the Applicant as a requirement of this Certification (i.e., applicant -responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Discharge of dredged material – means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States and/or State.

Discharge of fill material – means the addition of fill material into waters of the United States and/or State.

Dredged material – means material that is excavated or dredged from waters of the United States and/or State.

Ecological Success Performance Standards – means observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Enhancement – means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment – means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist. Creation results in a gain in aquatic resource area.

Fill material – means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Isolated wetland – means a wetland with no surface water connection to other aquatic resources.

Mitigation Bank – means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing mitigation for impacts authorized by this Certification.

Preservation - means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Start of Project Construction - For the purpose of this Certification, "start of Project construction" means to engage in a program of on-site construction, including site clearing, grading, dredging, landfilling, changing equipment, substituting equipment, or even moving the location of equipment specifically designed for a stationary source in preparation for the fabrication, erection or installation of the building components of the stationary source within waters of the United States and/or State.

Uplands - means non-wetland areas that lack any field-based indicators of wetlands or other aquatic conditions. Uplands are generally well-drained and occur above (i.e., up-slope) from nearby aquatic areas. Wetlands can, however, be entirely surrounded by uplands. For example, some natural seeps and constructed stock ponds lack aboveground hydrological connection to other aquatic areas. In the watershed context, uplands comprise the landscape matrix in which aquatic areas form. They are the primary sources of sediment, surface runoff, and associated chemicals that are deposited in aquatic areas or transported through them.

Water quality objectives and other appropriate requirements of state law – means the water quality objectives and beneficial uses as specified in the appropriate water quality control plan(s); the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act; and any other appropriate requirement of state law.

ATTACHMENT 5

MITIGATION MONITORING AND REPORTING PROGRAM

1. City of Encinitas Mitigated Negative Declaration, Table 1



CITY OF ENCINITAS
Planning and Building Department
505 South Vulcan Avenue
Encinitas, CA 92024
760.633.2692
Fax: 760.633.2818

Mitigated Negative Declaration

CASE No. 07-202

SUBJECT: Encinitas Creek Drainage Channel Improvements Project: Grading Permit and Coastal Development Permit. Flood flow improvements within Encinitas Creek on ~~5.24~~.8 acres of land, north of Leucadia Blvd. and a .07 ac area at the southeast corner of El Camino Real and Olivenhain Road. The project site is currently designated "SP-3" (Encinitas Ranch Specific Plan, Green Valley Planning Area). The Specific Plan designation for the site is "Open Space." The project site is primarily located on the northwest corner of El Camino Real and Leucadia Boulevard in the Leucadia community. Applicant: City of Encinitas Engineering Department.

- I. PROJECT DESCRIPTION: See attached Initial Study**
- II. ENVIRONMENTAL SETTING: See attached Initial Study**
- III. DETERMINATION**

The City of Encinitas conducted an Initial Study that determined the proposed project could have a significant environmental effect in the following area: Biological Resources. Mitigation measures are identified in Section V. of this Mitigated Negative Declaration. The project avoids or mitigates the potentially significant environmental effects to below a level of significance, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION

The attached Initial Study documents the reasons to support the above determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM

Mitigation measures are recommended for impacts to sensitive vegetation communities as analyzed in the Initial Study.

Biological Resources

BIO-1: To avoid potential direct and indirect impacts to the least Bell's vireo and southwestern willow flycatcher, all site preparation and construction activities shall be conducted outside of the breeding season for these species (March 15 through ~~September 15~~ August 31). In addition, annual maintenance clearing and sediment removal of the channel bottom would occur outside the breeding season and would be limited to a two week window between September 16 and October 1. If work is unavoidable during this time period, then protocol-level surveys shall be conducted by a qualified biologist to determine the presence/absence of these species on site, and appropriate protective measures shall be taken as determined by the California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS).

BIO-2: Prior to grading permit issuance, wetland permits for the project shall be issued by the U.S. Army Corps of Engineers and California Department of Fish and Game. In addition, the "Final Compensatory Wetland Mitigation and Monitoring Plan" prepared by Dudek and Associates (December 2008) shall be reviewed and approved to the satisfaction of the U.S. Army Corps of Engineers and California Department of Fish and Game. The approved plan and its provisions shall be implemented by the City to the satisfaction of the wetland permitting agencies and in accordance with applicable wetland permit conditions.

A summary of the proposed mitigation for permanent impacts to jurisdictional waters of the U.S., including wetlands, is provided in Table 1.

**Table 1
Recommended Mitigation Ratios For Impacts To Sensitive Vegetation Communities**

Vegetation Community / Land Cover	Temporary Impacts and Mitigation		Permanent Impacts and Mitigation		Total Mitigation Required (acres)	Mitigation Proposed On Site			
	Acres	Ratio	Acres	Ratio		Creation (establishment)	Enhancement	Restoration (rehabilitation)	Total (acres)
Southern Willow Scrub	<u>0.503</u> 77	1:1	<u>0.227</u> 09	3:1	<u>1.184</u> 04	0.34	exotic trees removed <u>0.60</u> acre	<u>0.5963</u> acre main channel and 0.07 acre southeast corner	<u>1.6004</u> acre plus tree removal
Disturbed Southern Willow Scrub	<u>0.3558</u>	1:1	<u>0.2207</u>	3:1	<u>1.0107</u> 09	—	<u>1.1106</u>	—	<u>1.1106</u>

Table 1 (continued)

Vegetation Community / Land Cover	Temporary Impacts and Mitigation		Permanent Impacts and Mitigation		Total Mitigation Required (acres)	Mitigation Proposed On Site			
	Acres	Ratio	Acres	Ratio		Creation (establishment)	Enhancement	Restoration (rehabilitation)	Total (acres)
Disturbed Wetland	0.0948	1:1	0.1304	1:1	0.22**	—	—	—	—
Existing Wetlands Mitigation Area* (Southern Willow Scrub)	0.0644	3:1	0.002	5:1	0.2833*	—	—	—	—
Fresh Water Marsh	—	—	—	—	—	0.01 acre	—	0.7795	0.7896
Total	1.00364		0.59720		2.69438	0.35	1.7106	1.4365	3.4906**

* Existing wetlands mitigation area is a sliver of mitigation from the Encinitas Ranch Green Valley Phase I wetland mitigation project that was previously installed immediately north of the Leucadia Boulevard bridge. This is being compensated for through southern willow scrub creation and enhancement on site.

** Impacts to disturbed wetlands are being compensated for through fresh water marsh restoration (rehabilitation).

***The 3.0649 acres of proposed mitigation acreage provides 0.6880 acre of additional mitigation area above the minimum required mitigation amount of 2.3869 acre as additional compensation for the project.

Wetlands mitigation shall occur as a combination of on-site creation (i.e., establishment), enhancement, and restoration (i.e., rehabilitation) of disturbed riparian habitat and non-native disturbed and/or ruderal/ornamental areas. The primary goal of the wetlands mitigation and monitoring program is to ensure that permanent and temporary impacts to jurisdictional wetland areas associated with the project are fully mitigated and compensated for in accordance with the “No Net Loss” of wetlands policies administered by the Army Corps of Engineers and adhered to by CDFG (Dudek 2006). This goal includes revegetation and restoration of the proposed drainage channel area within the project, to provide functions and values equal to or greater than those provided by the existing habitats, and to improve the hydrology and the overall habitat value of the drainage channel within the project area. The channel bottom, side slopes and a 15-foot-wide construction buffer zone surrounding the channel shall be revegetated with appropriate wetland species in order to restore the pre-construction habitat functions and values. Ruderal, giant reed (*Arundo donax*), and ornamental habitats shall be converted to southern willow scrub in an additional effort to increase habitat functions and values in the area (Figures 5a and 5b) (Dudek 2008). As a final measure, existing disturbed southern willow scrub on site shall be enhanced through the removal of exotic/invasive tree and shrub species coupled with the planting and seeding of appropriate southern willow scrub species.

The habitats to be revegetated within the on-site drainage channel, side slopes, and proposed creation/enhancement areas are ultimately expected to have higher functions and values than the disturbed areas within the existing channel area. This shall be achieved by removing non-

native/exotic plant species and planting/seeding the areas with native wetland species, thus increasing the quantity and diversity of native wetland species in the area.

BIO-3: A monitoring biologist approved by the Wildlife Agencies shall be on site during initial clearing and grubbing of wetland habitat and project construction to ensure compliance with all biological mitigation measures. The biologist must be knowledgeable of vireo and flycatcher biology and ecology. The applicant shall submit the biologist's name, address, telephone number, and work schedule on the project to the Wildlife Agencies at least 15 days prior to initiating project impacts. The biologist shall perform the following duties:

- a. Be on site during all vegetation clearing/grubbing and project construction
- b. Oversee installation of and inspect the fencing and erosion control measures within or upslope of habitat to be avoided a minimum of once per week and daily during all rain events to ensure that any breaks in the fence or erosion control measures are repaired immediately.
- c. Periodically monitor the work area to ensure that work activities do not generate excessive amounts of dust.
- d. Train all contractors and construction personnel on the biological resources associated with this project and ensure that training is implemented by construction personnel. At a minimum, training will include: (1) the purpose for resource protection; (2) a description of the vireo and flycatcher and their habitat; (3) the conservation measures given in the MND that shall be implemented during project construction to conserve the vireo and flycatcher, including strictly limiting activities, vehicles, equipment, and construction materials to the fenced project footprint to avoid sensitive resource areas in the field (i.e., avoided areas delineated on maps or on the project site by fencing); (4) environmentally responsible construction practices; (5) the protocol to resolve conflicts that may arise at any time during the construction process; and (6) the general provisions of the Clean Water Act, the need to adhere to the provisions of the Clean Water Act, the penalties associated with violating the Clean Water Act.
- e. Halt work, if necessary, and confer with the Wildlife Agencies to ensure the proper implementation of species and habitat protection measures. The biologist will report any non-compliance issues to the Wildlife Agencies within 24 hours of its occurrence.
- f. Submit weekly letter reports (including photographs of impact areas) to the Wildlife Agencies during all vegetation clearing/grubbing and project construction. The weekly reports will document that authorized impacts were not

exceeded and general compliance with all conditions. Raw field notes shall be available upon request by the Wildlife Agencies.

- g. Submit a final report to the Wildlife Agencies within 60 days of project completion that includes: as-built construction drawings with an overlay of habitat that was impacted and avoided, photographs of habitat areas that were to be avoided, and other relevant summary information documenting that authorized impacts were not exceeded and that general compliance with all biological mitigation measures was achieved.

BIO-4: The City shall ensure that the following conditions are implemented during project construction.

- Employees shall strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint.
 - To avoid attracting predators of the vireo and flycatcher, the project site shall be kept as clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site.
 - Pets of project personnel shall not be allowed on the project site.
 - Disposal or temporary placement of excess fill, brush or other debris shall not be allowed in waters of the United States or their banks.
 - All equipment maintenance, staging, and dispensing of fuel, oil, coolant, or any other such activities shall occur in designated areas outside of waters of the United States within the fenced project impact limits. These designated areas shall be located in previously compacted and disturbed areas to the maximum extent practicable in such a manner as to prevent any runoff from entering waters of the United States, and shall be shown on the construction plans. Fueling of equipment shall take place within existing paved areas greater than 100 feet from waters of the United States. Contractor equipment shall be checked for leaks prior to operation and repaired as necessary. "No-fueling zones" shall be designated on construction plans.
- a. If night work is necessary, night lighting shall be of the lowest illumination necessary for human safety, selectively placed, shielded, and directed away from natural habitats.
- b. Any planting stock to be brought onto the project site for creation/restoration shall be first inspected by a qualified pest inspector to ensure it is free of pest species that could invade natural areas, including but not limited to, Argentine ants (*Linepithema humile*), fire ants (*Solenopsis invicta*), and other insect pests. Any planting stock found to be infested with such pests shall not be allowed on

the project site or within 300 feet of natural habitats unless documentation is provided to the Wildlife Agencies that these pests already occur in natural areas around the project site. The stock shall be quarantined, treated, or disposed of according to best management principles by qualified experts in a manner that precludes invasions into natural habitats. The City shall ensure that all temporary irrigation will be for the shortest duration possible, and that no permanent irrigation will be used, for landscape or habitat creation/restoration/enhancement.

c. The City shall temporarily fence (with silt barriers) the limits of project impacts (including construction staging areas and access routes) to prevent additional habitat impacts and prevent the spread of silt from the construction zone into adjacent habitats to be avoided. Fencing shall be installed in a manner that does not impact habitats to be avoided. If work occurs beyond the fenced or demarcated limits of impact, all work shall cease until the problem has been remedied to the satisfaction of the Agencies. Any impacts that occur beyond the approved fenced shall be mitigated at a minimum 5:1 ratio. Temporary construction fencing shall be removed upon project completion

VI. RESULTS OF PUBLIC REVIEW

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- () Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Mitigated Negative Declaration and any Initial Study material are available in the office of the City of Encinitas Planning and Building Department for review, or for purchase at the cost of reproduction.

Scott Vurbeff, Environmental Coordinator
Planning and Building Department

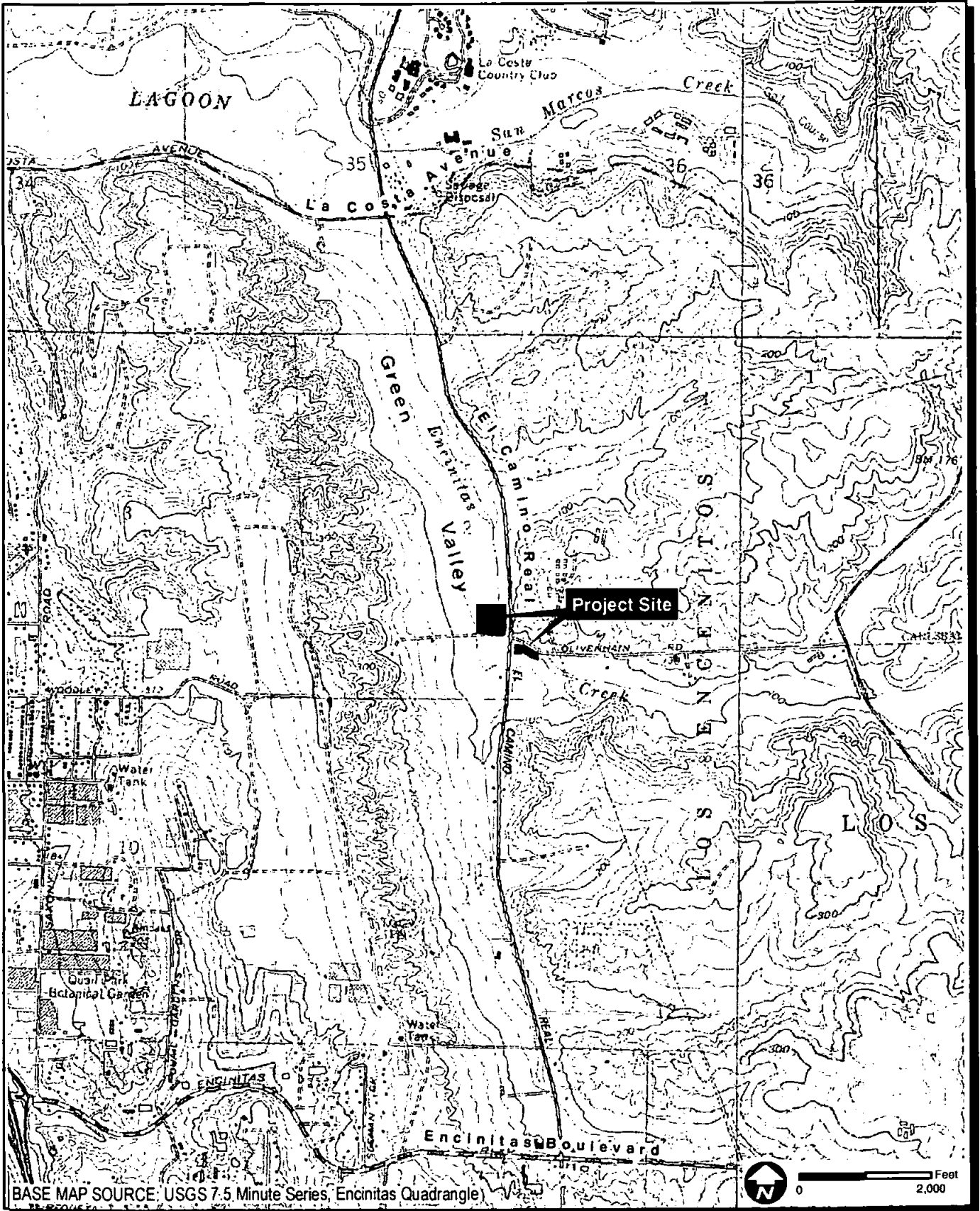
March 2009
Date of Draft Report

October 2009
Date of Final Report

ATTACHMENT 2

LOCATION MAP

1. Vicinity Map, Figure 2



Z:\projects\4200\1\Figs\MND\MND4420_Fig02.mxd

Encinitas Creek Channel Improvement Project at El Camino Real & Leucadia Boulevard · MND
Vicinity Map

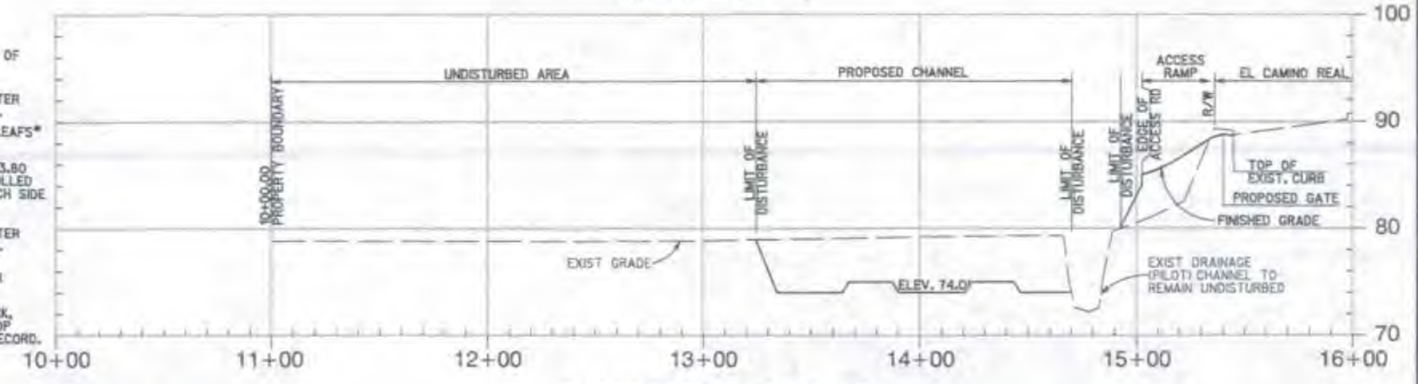
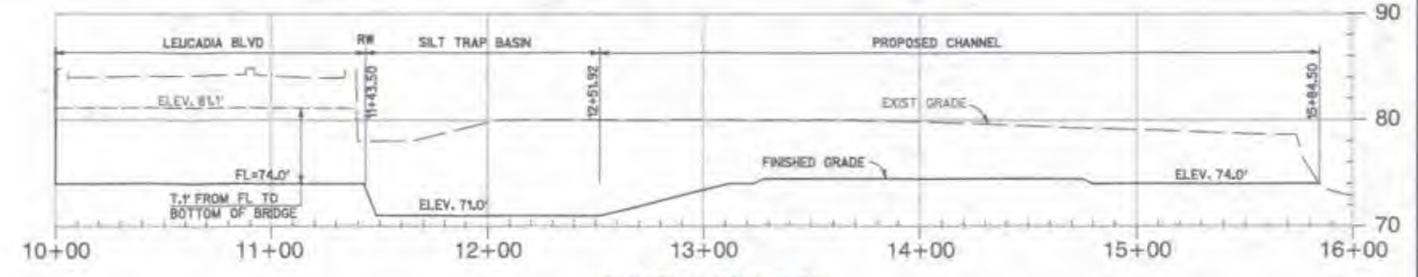
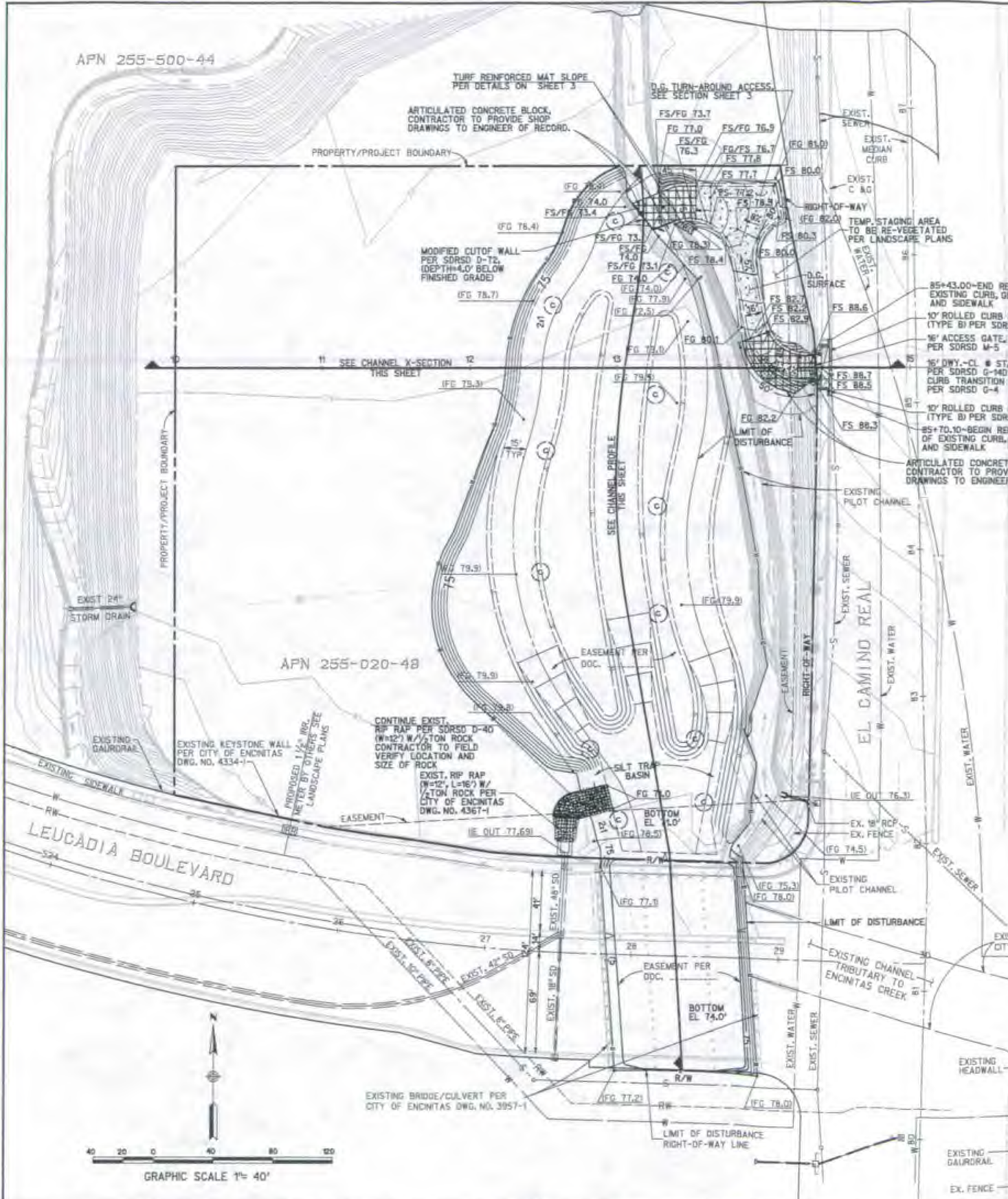
FIGURE
2

ATTACHMENT 3

PROJECT SITE PLANS

1. Encinitas Creek Improvement Project at Leucadia Blvd. and El Camino Real, C-2

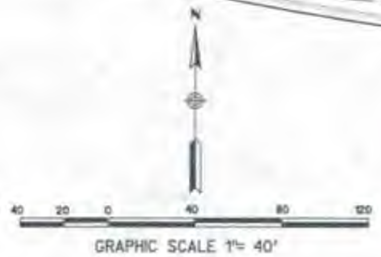
APN 255-500-44



- NOTES:**
- GATE AT ACCESS RAMP SHOULD OPEN INWARD TOWARDS CHANNEL. GATES SHALL BE ABLE TO BE SECURED IN THE OPEN POSITION. GATE SHALL INCLUDE "NO TRESPASSING" SIGN/PLACARD.
 - EXISTING UTILITIES PER CITY OF ENCINITAS DWG. NO. LP. 3957-1 AND 4367-1.

- GRADING NOTES:**
- NO BLASTING SHALL BE PERFORMED UNTIL A VALID BLASTING PERMIT HAS BEEN OBTAINED FROM THE CITY OF ENCINITAS.
 - IF ANY ARCHAEOLOGICAL RESOURCES ARE DISCOVERED WITHIN ANY WORK AREA DURING CONSTRUCTION, OPERATIONS WILL CEASE IMMEDIATELY, AND THE PERMITTEE WILL NOTIFY THE CITY ENGINEER. OPERATIONS WILL NOT RESTART UNTIL THE PERMITTEE HAS RECEIVED WRITTEN AUTHORITY FROM THE CITY ENGINEER TO DO SO.
 - ALL OPERATIONS CONDUCTED ON THE SITE OR ADJACENT THERETO, INCLUDING WARMING UP, REPAIR, ARRIVAL, DEPARTURE OR OPERATION OF TRUCKS, EARTHMOVING EQUIPMENT, CONSTRUCTION EQUIPMENT AND ANY OTHER ASSOCIATED GRADING EQUIPMENT SHALL BE LIMITED TO THE PERIOD BETWEEN 7:00 A.M. AND SUNSET EACH DAY, MONDAY THRU FRIDAY AND NO EARTHMOVING OR GRADING OPERATIONS SHALL BE CONDUCTED ON WEEKENDS OR HOLIDAYS.
 - ALL OFF-SITE HAUL ROUTES SHALL BE SUBMITTED BY THE CONTRACTOR TO THE CITY ENGINEER FOR APPROVAL PRIOR TO BEGINNING OF WORK.
 - IMPORT MATERIAL SHALL BE OBTAINED FROM AND WASTE MATERIAL SHALL BE DEPOSITED AT A SITE APPROVED BY THE CITY ENGINEER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DEBRIS OR DAMAGE OCCURRING ALONG THE HAUL ROUTES OR ADJACENT STREETS AS A RESULT OF THE GRADING OPERATION.
 - REFER TO ENCINITAS CREEK DRAINAGE CHANNEL IMPROVEMENT REVEGETATION/MITIGATION PLANS BY DUDEX FOR PROTECTION AND DEMOLITION OF EXISTING TREES AND OTHER VEGETATION.

- GRADING NOTES ~ CONTINUED:**
- ALL SLOPES SHALL BE TRIMMED TO A FINISH GRADE TO PRODUCE A UNIFORM SURFACE AND CROSS SECTION. THE SITE SHALL BE LEFT IN A NEAT AND ORDERLY CONDITION. ALL STONES, ROOTS OR OTHER DEBRIS SHALL BE REMOVED AND DISPOSED OF AT A SITE APPROVED BY THE CITY ENGINEER.
 - ALL SLOPES SHALL BE IRRIGATED, STABILIZED, PLANTED AND/OR HYDROSEEDED WITHIN TEN (10) DAYS OF THE TIME WHEN EACH SLOPE IS BROUGHT TO GRADE AS SHOWN ON THE APPROVED GRADING PLANS.
 - LANDSCAPING SHALL BE ACCOMPLISHED ON ALL SLOPES AND PADS AS REQUIRED BY THE CITY OF ENCINITAS. THE LANDSCAPING PLANS FOR THIS PROJECT, ENCINITAS CREEK DRAINAGE CHANNEL IMPROVEMENT REVEGETATION/MITIGATION PLANS, PREPARED BY DUDEX.
 - THE OWNER/APPLICANT SHALL INSURE THAT ALL CONTRACTORS SHALL COORDINATE THE WORK OF THESE GRADING PLANS WITH THAT SHOWN ON THE REVEGETATION/MITIGATION PLANS TITLED ABOVE AS REQUIRED FOR THIS WORK IN ACCORDANCE WITH THE CITY OF ENCINITAS TIME REQUIREMENTS.
 - THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING FACILITIES (ABOVE GROUND AND UNDER GROUND) WITHIN THE PROJECT SITE SUFFICIENTLY AHEAD OF GRADING TO PERMIT THE REVISION OF THE GRADING PLANS IF IT IS FOUND THAT THE ACTUAL LOCATIONS ARE IN CONFLICT WITH THE PROPOSED WORK.



REVISIONS	APPROVED	DATE	REFERENCES	DATE	BENCHMARK	SCALE	DESIGNED BY	DRAWN BY	CHECKED BY	APPROVALS	CITY OF ENCINITAS ENGINEERING DEPARTMENT	DRAWING NO.
					BENCHMARK: 00-0140 DESCRIPTION: CORN IN CONCRETE ADJUTMENT STAMPED DC 140 1968 LOCATION: 300' EAST OF INTERSECTION OF HWY 101 & ENCINITAS BLVD. ON NE CORNER OF 1/4 MIDGE A33-383 ELEVATION: 77.48' DATUM: SD COUNTY	HORIZONTAL 1"=40'	ENGINEER: JOHN D. GOODARD JR.			RECOMMENDED BY: _____ DATE: _____ APPROVED BY: PETER GUTA-ROBLEE, RCE NO. 52178 DATE: _____	PUBLIC IMPROVEMENT PLANS FOR: ENCINITAS CREEK IMPROVEMENTS PROJECT AT LEUCADIA BLVD. & EL CAMINO REAL	C-2 SHEET 2 OF 5

ATTACHMENT 4

MITIGATION DESIGN PLANS

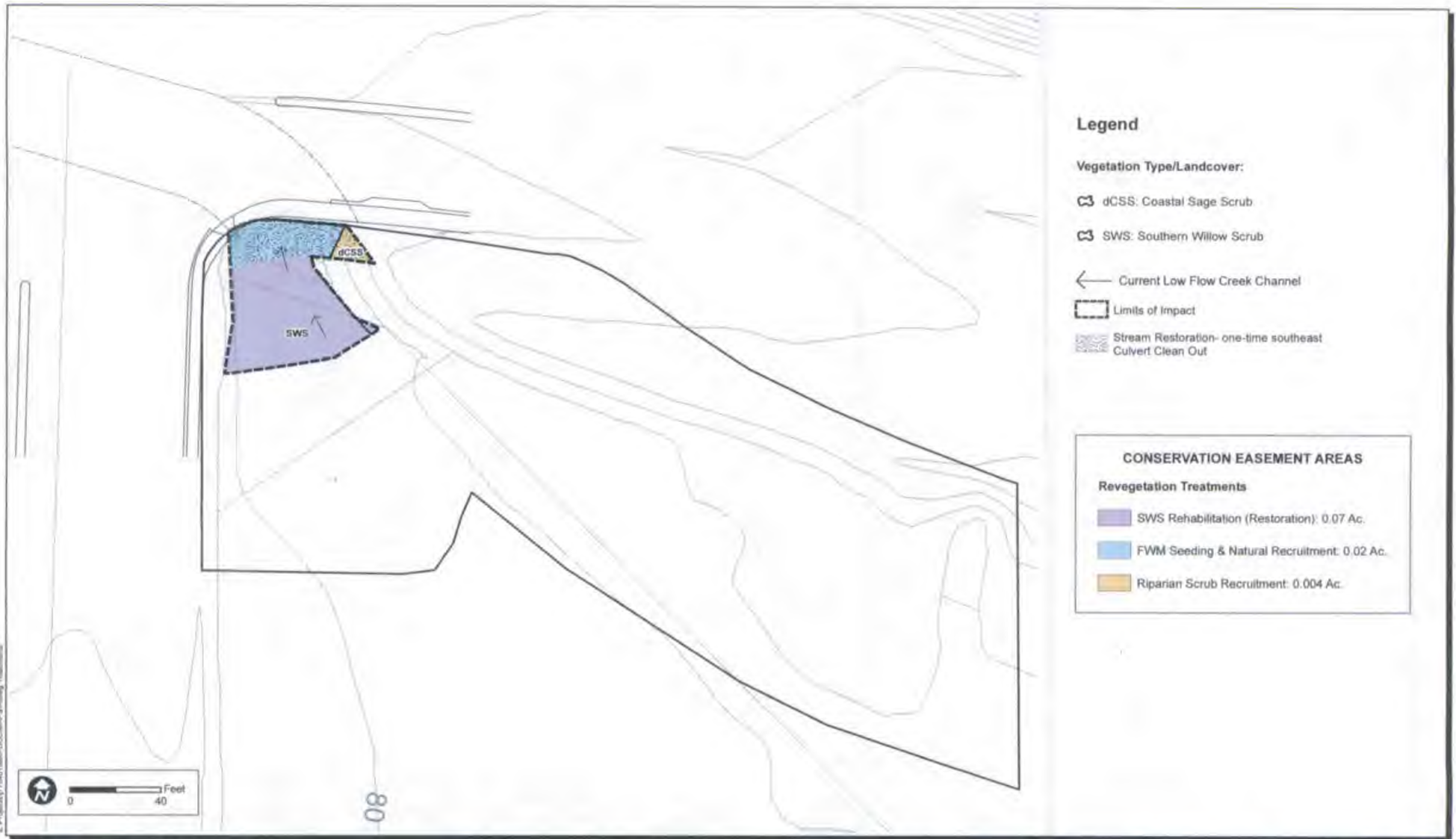
1. Revegetation Area Treatment Map, Northwest Corner, Figure 2
2. Revegetation Area Treatment Map, Southeast Corner, Figure 3



Design Source: Rick Engineering August 2012

Encinitas Creek Channel Improvement Project at El Camino Real & Leucadia Boulevard - Final Restoration, Maintenance and Monitoring Plan
Revegetation Area Treatment Map - Northwest Corner

FIGURE
2



Design Source: Rick Engineering February 2011

Encinitas Creek Channel Improvement Project at El Camino Real & Leucadia Boulevard - Final Restoration, Maintenance and Monitoring Plan
Revegetation Area Treatment Map - Southeast Corner

FIGURE
3